



Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS-SC-22-0001]

Florida Citrus Marketing Order; Exemption for Pummelos

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Citrus Administrative Committee (Committee) to exempt pummelos from requirements prescribed under the Florida citrus marketing order. This change exempts pummelos from all requirements under the marketing order, including registration, assessment, and reporting requirements.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Branch Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: Jennie.Varela@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the

handling of oranges, grapefruit, tangerines, and pummelos grown in Florida. Part 905, (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of growers and handlers of fresh citrus operating within the production area, and a non-industry member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175 — Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. The Agricultural Marketing Service (AMS) has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Department of Agriculture (USDA) a petition stating that

the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This rule exempts pummelos from all requirements under the Order, including registration, assessment, and reporting requirements. The Committee unanimously recommended this action at its November 30, 2021, meeting.

This action creates the exemption under a new § 905.130. Section 905.7 provides the authority to require handlers to be registered with the Committee pursuant to rules recommended by the Committee and approved by the Secretary of Agriculture (Secretary). Section 905.41 authorizes the Committee to collect assessments, such that each handler shall pay the Committee a pro rata share of the expenses.

Sections 905.70 and 905.71 provide the authority for the Committee to collect reports from handlers including, information regarding the variety, grade, and size of each standard packed carton of fruit shipped, and any other information deemed necessary to administer the Order, with the approval of the Secretary. Section 905.80 of the Order allows the Committee to specify additional types of shipments or purposes that would not be subject to regulation or payment of assessments, with the approval of the Secretary.

The regulations associated with these authorities include § 905.107, which outlines the registered handler requirements, § 905.171, which requires handlers to report

the list of growers for whom they handled, and § 905.235, which requires handlers pay assessments of \$0.015 per 4/5-bushel carton to the Committee.

The Florida citrus industry voted to incorporate pummelos into the Order when it was amended in 2016, as pummelos were being used to develop new citrus hybrids. However, there are not yet any pummelo hybrid varieties produced in commercial volume. The current market for pummelos is small, estimated at 100,000 boxes, or 200,000 cartons. In comparison, the entire Florida citrus industry shipped over 6 million cartons of other fresh citrus commodities during the 2020-21 season.

The Order regulates shipments of fresh citrus leaving the State of Florida for grade and size. Intrastate shipments are covered by parallel State regulations. The Florida Department of Agriculture and Consumer Services inspects fresh citrus at packinghouses and provides shipment data to the Committee. The Committee then uses the data to bill for assessments and to issue industry reports. There are currently no quality requirements in effect for pummelos or pummelo hybrids under the Order, nor are there any State requirements. As a result, there is no inspection and therefore no established method of data collection for pummelos.

Since the Order was amended, Committee staff have been in contact with pummelo growers and handlers, working on a way to collect required information and assessments. Under the current Order requirements and industry practices, there is no uniform way to meet the requirements without creating a specific reporting requirement for pummelos. In addition, pummelo growers and shippers have communicated to the Committee that they would like to be excluded from Order requirements.

During the November 30, 2021, Committee meeting, members discussed the issues related to pummelo shipments, including whether to develop a new system for collecting information and assessments on pummelo fruit. The Committee reports that

there are only six pummelo producers and three shippers, most of whom are small grower-shippers not handling any other citrus covered under the Order.

Committee members indicated that with the volume for pummelo and pummelo hybrids remaining stagnant, there is currently no desire to establish grade and size requirements on pummelo at the State or Federal level. Therefore, there are no data from inspection. Consequently, if pummelo and pummelo hybrids remain subject to Order requirements for reporting and assessments, it would be necessary for the Committee to establish separate reporting procedures and documentation for pummelo movement.

The Committee expressed uncertainty that creating requirements specifically for pummelo would add value to the industry. Even if the shipment data were collected, because of confidentiality concerns, the Committee may not be able to report out the results due to the small number of handlers. Further, at the estimated volume shipped, additional assessments would total \$3,000. This amount may not be sufficient to cover the cost of developing the necessary reports and ensuring compliance.

The Committee has previously recommended, and AMS approved, exemptions for gift packages, minimum shipments, and animal feed. These are shipping channels or volumes that would not affect overall demand for fresh fruit. Similarly, the Committee believes demand would not be harmed if pummelo shipments continued without being subject to the requirements of the Order.

This change exempts pummelos from all requirements under the Order, including registration, assessment, and reporting requirements. This exemption will be codified in a new § 905.130. If a handler ships pummelo as well as other regulated citrus, the handler will still have to meet all requirements related to the other citrus covered by the Order. Further, the Committee could consider removing this exemption if conditions change over time. Thus, the Committee unanimously recommended exempting pummelo fruit from all Order requirements.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this rule is consistent with and will effectuate the purposes of the Act.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 500 producers of Florida citrus in the production area and about 15 handlers subject to regulation under the Order. The Committee reports there are six pummelo producers and three shippers. Small agricultural producers of orange groves are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of \$3,500,000 or less, and small agricultural service firms are defined as those whose annual receipts are \$30,000,000 or less (13 CFR 121.201).

According to data from the National Agricultural Statistics Service (NASS) and the Committee, the weighted average packing house door equivalent price for fresh Florida citrus for the 2020–21 season was approximately \$6.52 per carton with total shipments of 6,022,426 cartons. Using the number of handlers, the majority of handlers have average annual receipts of less than \$30,000,000 (\$6.52 multiplied by 6,022,426 cartons equals \$39,266,217.52 divided by 15 handlers equals \$2,617,747.83 per handler).

In addition, based on the NASS data, the weighted average grower price for the 2020-21 season was estimated at \$4.95 per carton of fresh citrus. Based on grower price, shipment data, and the total number of Florida citrus growers, the average annual grower revenue is below \$3,500,000 (\$4.95 multiplied by 6,022,426 million cartons equals \$29,811,008.70 divided by 500 growers equals \$59,622.02 per grower). Thus, the majority of Florida citrus handlers and growers may be classified as small entities.

This rule exempts pummelos from all requirements under the Order, including assessment and reporting requirements. Without this exemption, it would be necessary for the Committee to establish separate reporting procedures for pummelos. This rule creates § 905.130 to establish the pummelo exemption. Authority for this change is provided in §§ 905.7, 905.41, 905.70, 905.71, and 905.80.

This action is not expected to increase the costs associated with the Order's requirements. Rather, it is anticipated this action will have a beneficial impact by exempting pummelo handlers, primarily small entities, from regulation, assessment, and reporting requirements.

Exemption from assessments will create a minimal loss of revenue. Using the current assessment rate and pummelo shipments estimated by Committee members (200,000 cartons), there would be about \$3,000 lost per year. Developing an alternative reporting process and maintaining compliance would likely cost the Committee more than that amount in staff time. Pummelo growers and handlers should benefit from this change regardless of their size.

The Committee discussed an alternative to this action. It considered whether there was a need to establish grade and size requirements for pummelo and track the shipments as they do for other citrus fruits. Committee members indicated the pummelo market is not experiencing quality concerns, and there is no industry interest in creating such requirements. Therefore, the Committee rejected this alternative.

Committee meetings were widely publicized throughout the citrus industry. All interested persons were invited to attend Committee meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the November 30, 2021, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements are necessary because of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the Initial Regulatory Flexibility Analysis, AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on October 19, 2022 (87 FR 63431). Copies of the proposed rule were also mailed or sent via e-mail to all Florida citrus handlers. The proposal was made available through the internet by AMS and the Office of the Federal Register. A 30-day comment period ending November 18, 2022, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Pummelos, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 905 as follows:

**PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS
GROWN IN FLORIDA**

1. The authority citation for part 905 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Add § 905.130 under the undesignated center heading “Non-Regulated Fruit” to read as follows:

§ 905.130 Exemptions for Pummelo.

The handling of pummelo fruit or pummelo hybrids shall be exempt from the provisions of §§ 905.7, 905.41, 905.70, 905.71, and the regulations issued thereunder: Provided, That, if the handler ships other fruit subject to Order requirements, the handler must comply with all sections of the Order applicable to such fruit, including handler registration.

Erin Morris,

*Associate Administrator,
Agricultural Marketing Service.*

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